

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NENITA B. HU, ACCUSED-APPELLANT.

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

On appeal is the Judgment[1] dated August 12, 2004 of the Regional Trial Court of Makati City, Branch 138 in Criminal Case No. 03-857 convicting the accused Nenita B. Hu of Simple Illegal Recruitment, the dispositive portion of which reads as follows:

"WHEREFORE, judgment is rendered finding accused NENITA B. HU guilty of simple illegal recruitment defined and penalized under Republic Act No. 8042 [Migrant Workers and Overseas Filipinos Act of 1995] Sections 6 and 7 and she is sentenced to suffer the penalty of imprisonment of not less than six [6] years and one [1] day but not more than twelve [12] years and a fine of Php200,000.00 She is further ordered to pay complainant Carlito M. Dungca Php100,000.00 to reimburse him for the fee of Php55,000.00 and other damages.

"Let the case as against ETHEL GENOVES be removed from the docket of active cases of this Court and the records are ordered sent to the archives.

"SO ORDERED." [2]

The facts are as follows: Accused Nenita B. Hu is the President of Brightturn International Services ("Brightturn"), a local recruitment agency engaged in the business of deploying Filipinos for overseas work. [3] Her co-accused Ethel Genoves, on the other hand, is the proprietress of Riverland Consultancy Services ("Riverland") with office address at LPL Building, Sen. Gil J. Puyat, Avenue, Makati City. [4] Private complainant Carlito Dungca is a welder and resident of San Jose, Concepcion, Tarlac. Dungca had wanted to work abroad and an old friend, Jun Salta, told him he is an agent of Riverland. On October 3, 2001, Jun Salta brought Dungca to the office of Riverland at LPL Building where Dungca met accused Ethel Genoves. [5]

Dungca was briefly interviewed by accused Hu at the office of Riverland and was asked if he had been to Taiwan or abroad. Accused Genoves referred Dungca to Brightturn to apply for a job as factory worker in Taiwan. One (1) week later, Dungca was brought to the office of Brightturn where he was interviewed by his prospective employer. Thereafter, Dungca was told by Salta that according to accused Genoves, that the job applicants including him did not pass the exam and that they will just be accommodated ("Isisingit daw kamit"). Accused Genoves demanded from Dungca placement fee in the amount of P50,000.00, which according to her will be given to accused Hu of Brightturn. Dungca paid the placement fee which she gave to accused Genoves, he first gave the latter P5,000.00 and then another P40,000.00 for which he was issued official receipts dated October 18, 2001 and November 8, 2001. On November 12, 2001, Dungca gave another P5,000.00 to accused Genoves who issued her a temporary receipt. [6] Sometime in March 2002, Dungca together with other applicants were following up their applications at the office of Brightturn. Accused Hu showed them a list of those who had already paid. He was asked by accused Hu to pay another P5,000.00 for surety bond which was received by a female staff; no receipt was issued for said amount. They were told that the amounts they paid through Genoves

are incomplete. Dungca was given his purported Contract for Employment in Taiwan and Addendum to the Contract, which accused Hu sent thru Jun Salta. The Addendum to the Contract was signed by accused Hu. Dungca was given the referral slip for his medical examination at the Joint DOH MARINA Consultative Committee, also signed by accused Hu.[7] However, upon submission of the documents to the Philippine Overseas Employment Administration (POEA), it was found out that the contract or license of the agency had already expired. The applicants were then referred again to another agency, Best One. They kept on following up their job applications with accused Hu and Genoves at their offices, but nothing happened. On June 25, 2002, Dungca executed his "Sinumpaang Salaysay" before the POEA Administering Officer.[8]

On March 12, 2003, accused Genoves and Hu were formally charged with Illegal Recruitment Constituting Economic Sabotage as defined and penalized under Section 6 (m) in relation to Section 7 (b) of R. A. No. 8042, under the following Information:

"That in or about and during the period from October 11, 2001 to May 8, 2002, in the City of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and all of them mutually aiding and helping one another, representing themselves to have the capacity to contract, enlist, transport and refer workers for employment abroad, without license or authority to do so, did then and there willfully, unlawfully and feloniously recruit for a fee complainants THOMAS S. VILLANUEVA, RENATO B. DE LEON, CARLITO M. DUNGCA, GERRY F. BALILO, ALLAN S. VILLAPANA, ALVIN S. FIGUEROA and JAYSON CALARA individually or as a group, for employment abroad, but said accused failed to actually deploy without valid reasons said complainants and to reimburse the expenses incurred by them in connection with the documentation and processing for purposes of deployment, to the latter's damage and prejudice.

"CONTRARY TO LAW."[9]

Accused Hu was arrested on May 6, 2003 while her co-accused Genoves could no longer be found at her given address.[10] During her arraignment on November 18, 2003, accused duly assisted by counsel de officio pleaded not guilty to the charge.[11] At the trial, private complainant testified while the accused was also the lone witness for the defense.

CARLITO DUNGCA testified that he met accused Hu and Genoves at the LPL Building in the office of Riverland on October 3, 2001. Jun Salta, their agent, referred him to the accused and so he went to the office of Genoves where he was interviewed for just a minute by Hu. Hu asked him if he had been to Taiwan or abroad; Genoves referred him to the agency of Hu, Brightturn. One (1) week later, he was brought to the office of Brightturn where some twenty (20) applicants, including him, were interviewed by their prospective employer. He knew it was the office of Mrs. Hu because he was interviewed at the other side of her office. He learned a few days after from Jun Salta that according to Genoves they did not pass the exam, and they were told that they will just be accommodated ("Isisingit daw po kami"). Genoves asked placement fee from them in the amount of P50,000.00 excluding the surety bond. He paid the placement fee: first, he gave P5,000.00, and then P40,000.00, and another P5,000.00. Genoves said that the money they gave to her are being turned over to Mrs. Hu. He confirmed this when Mrs. Hu at her office sometime in March 2002 showed him a list of payments received by her thru Genoves. At the time, they were following up their job application and Mrs. Hu told them that the money being turned over by Genoves are not complete and so they were asked to pay P5,000.00 so that their papers will be processed. They gave the money to Mrs. Hu thru her lady staff in the office. No receipt was issued for such payment of P5,000.00. The agent told them and explained that it is Mrs. Hu who is the one (1) issuing the receipts. He paid the P5,000.00 on March 26, 2002. But nothing happened to their job applications; he had applied for a job as factory worker in Taiwan. He has official receipts for the payment of placement fee, but for the P5,000.00 Genoves gave only a temporary receipt signed by her (Exhibits "A", "B" and "C"). When asked about

the originals of these receipts, the witness explained these are with Branch 58. Accused kept promising but still they were not deployed for the jobs abroad. He also incurred other expenses like the pictures, passport, medical examination and transportation expenses. All in all, he had spent about P100,000.00; he lives in Tarlac and his fare in going back and forth to Metro Manila is P300.00.[12]

On cross-examination, private complainant said that Jun Salta is an old friend and that he did not himself promise employment to him, but it is the agency which deploys applicants for work abroad. When Salta brought them to Riverland he mentioned about Brightturn Agency. When they first applied to Salta, there was no available job for males and so he referred them to Riverland Agency. The office of Brightturn Agency is in San Marcelino St., but he does not remember the exact address. Together with Salta and one (1) Mr. Gonzaga, they were referred to Brightturn at the office of Genoves who accompanied them in going to the office of Brightturn. He does not recall who interviewed him at Brightturn. A few days after, he was told that he did not pass the interview. When the agency failed to deploy them despite payment of the placement fee, he and several applicants demanded for reimbursement. As to the list shown to him by Mrs. Hu, it includes applicants also of Riverland. He does not know the applicants of Brightturn; he knows only their physical appearance and their names. The P5,000.00 for surety bond was asked by Mrs. Hu but it was her lady staff who received the money. Those receipts he has with him were voluntarily issued by the agency but the temporary receipt was given because Genoves was not present at the time and he was unable to go back to Riverland to ask for an official receipt.[13]

On re-direct examination, private complaint said that the Addendum to the Contract (Exhibit "E") was given to him by the staff of Brightturn while the Referral Slip (Exhibit "F") was sent by Mrs. Hu through Jun Salta. They filled up that form (Addendum to the Contract) which was forwarded to the POEA and then they learned that the contract has already expired and so they were referred again to Best One. He had met accused Hu about four (4) times, first in the office of accused Genoves; the second time was when they were demanding explanation why they were not yet deployed abroad; the third one (1) was when they gave the P5,000.00; and the last time was when they were about to withdraw the money they had paid. They were not able to withdraw their money as Mrs. Hu told them she was going to deploy them but nothing happened.[14] On re-cross examination, private complainant stated that Best One is a consultative agency, to which Brightturn forwarded the document (Exhibit "F") because the latter's license already expired, even his passport given to Mrs. Hu was forwarded to Best One. He gave his passport to the staff of Mrs. Hu; he knows that person to be her staff because they have pictures in the office.[15]

NENITA HU testified that she is a businesswoman and President of Brightturn International Services, Inc., a recruitment agency with office located at 1916 San Marcelino St., Malate, Manila. She has been connected with said company since 1997. Between October to December 2001, their recruitment officer was Sally Briones. The agency was already closed since January 2002. They conduct preliminary interviews of job applicants only at their office. The purpose of said interview is to know the applicants' skills, asking them about office procedure and their educational background. They kept the data in their office for future reference. After an applicant is hired, they sign a contract which is then filed with the POEA. The placement fee they charge is equivalent to one (1) month salary which they collect when documents are already being processed by the POEA. At the time Brightturn was still operating between October 2001 and January 2002, it was Elena Ampilles who collected placement fees, as authorized by their cashier. Applicants pay the placement fee at the office which issues them official receipt of the company. Accused presented samples of their official receipt which is duly stamped by the Bureau of Internal Revenue (BIR) [Exhibit "1"], the date of which is September 23, 1999. As to copies of those receipts issued between October 2001 and January 2002, they cannot locate these any more in their office because when the NBI invited her, she does not know where the receipts are. She knows the private complainants in this case as they went to the office in March 2002 to know if they have job orders since if there were none, they will

ask for refund of the placement fee. She asked them to wait for Sheryl who is the one (1) who knows their application. Job Orders refer to the position coming from the principal abroad. When Sheryl appeared in the office, Sheryl told her that private complainants did not apply personally in their office but Sheryl asked them to go to Best One to apply because their job orders were already transferred to Best One as their office was no longer accepting applicants in December. On her part, she asked if applicants have paid to Brightturn, instead they showed her a receipt from Riverland. She then advised them that if they want to continue their application with Best One, they should withdraw their money or placement fee from the agency. She denies knowing her co-accused Genoves, as she knows only the receipts signed by Genoves; the applicants also told her that Ethel Genoves and Janet Barros are one (1) and the same person. Genoves has no participation with respect to their application with Brightturn.[16]

On cross-examination, accused maintained that she met the private complainants only in March 2002 when they came to the office to ask if they have any job orders. It was Miss Sheryl who told them that their job orders were already in Best One and if they wish to apply and have job orders, they could go there. It was already first week of April 2002 when the applicants went to Best One. Private complainant Dungca went to Best One only in March. She admitted that the Referral Slip (Exhibit "F") bears her signature, with date indicated as April 22, 2002. She explained that the office already has ready referral slips signed by her and that their referral slip was not honored so Best One issued another referral slip. She prepared the referral slip for medical examination. She likewise admitted her signature in the Addendum to the Contract (Exhibit "E") as President of Brightturn, but it was a ready signed contract. If she was not the one (1) who entertained the application, it is the staff of Brightturn, Sheryl and Sally. She further explained that starting December 2001, there are plenty of selected workers of Oriental who backed out, and so they are asking if they can be inserted for the Job Orders, and the staff of Brightturn gives all the names of Brightturn's applicants, one (1) of those is private complainant Dungca. They processed Dungca's papers but since the POEA did not any more at the time (January 2002) allow Brightturn to process, she got Best One as one (1) of the representatives. The Addendum to the Contract was actually submitted to the POEA stamped January 17, 2002. That was the reason she asked Emmy and Sheryl to come to the office because they are the ones who know the application. At that time she learned that applicants who have been selected by the agency's principal are withdrawing their applications, they saw each other there. The POEA stamp on the contract means that it is ready for visa, the Embassy for Taiwan implemented a new rule that every worker bound for their country must pass through POEA personal appearance, as without it Taiwan could not give them a visa. Hence, they sent Dungca for personal appearance to the POEA on January 17, 2002; they were sent there as applicants of Best One. She admitted that she signed Exhibit "E" as President of Brightturn.[17]

On re-direct examination, accused said that as President of Brightturn she is incharge of overall management and operations but did not include the conduct of preliminary interviews of applicants or the preparation of documents of applicants. Exhibit "E" was prepared by Miss Emmy, their operation manager who prepares the documents before giving them to the liaison officer for processing and submission to the embassy. Dungca was an applicant of Brightturn on the second week of December, but she came to know of his application only in March. Sheryl told her that they applied sometime in December. She said Brightturn did not receive any commission from Dungca's application. She denied that they asked a placement fee from him because when the applicants made personal appearance at POEA in January, she was afraid that she will not pursue the renewal of the agency's license.[18] On re-cross examination, accused affirmed that Dungca was already an applicant of Brightturn as early as December but she did not know about it since only her authorized staff transacted with him. It is not always the case though that she does not know all the applicants of their agency. It was just that when Dungca came to their office, they found out that the office was robbed and documents, mostly passports, were stolen. She confirmed that Exhibits "E" and "F" were executed in connection with Dungca's application with Brightturn.[19]

On August 12, 2004, the trial court rendered judgment [20] convicting accused Hu of simple illegal recruitment, as follows:

"The issue is whether the evidence presented by the prosecution is sufficient to establish the guilt of accused Hu beyond reasonable doubt.

"Prosecution evidence yield five [5] incriminatory circumstances, viz: a] interview by accused Hu of complainant Dungca at LPL Building; b] interview of the complainant Dungca by the person he termed as employer at the office of accused Hu at San Marcelino; c] payment by complainant Dungca of Php5,000.00 on March 26, 2002 to an unidentified staff member of accused Hu; d] exhibition by accused Hu of the list of persons who paid to Genoves whose payments were given to her; and, e] the signatures of accused Hu appearing in the Addendum to Contract, Exhibit E, [on the first and third pages] and Referral Slip for Medical Examination, Exhibit F.

"The oral declaration of complainant Dungca that he pursued his application for work abroad through accused Hu is credible. The signatures of accused Hu appearing in the Addendum to Contract, Exhibit E [first and third pages] and Referral Slip for Medical Examination, Exhibit F, which she admitted, corroborate complainant Dungca's declaration that accused Hu participated in his recruitment. This is not all. The recruitment was admitted by accused Hu. She declared ---'Q

So it is clear now that as early as December Mr. Dungca was already an applicant of Brightturn only that you do not know about it because only your staff, your authorized staff transacted with Mr. Dungca?

A.

Yes, sir.

x x x x x x x x

Q.

So in connection with this application of Mr. Dungca with Brightturn (to comment [sic]) Exhibit E and F were executed?

A.

What document sir?

Q.

Meaning this Exhibit E which is the contract and this referral slip which is Exhibit F were prepared and executed in connection with the application of Mr. Dungca with Brightturn?

A.

As I said sir we have the document ready already by me because I am not always in the office sometime I am at POEA.

COURT

The question is were [sic] that executed in connection with his application with Brightturn?

A.

Yes, sir.'

[TSN, pp. 22-23, June 15, 2004]

"On the matter of fees paid by complainant Dungca, two [2] circumstances need be considered. One is the Php50,000.00 payment evidenced by Exhibits A, B and C and the other is payment of hp5,000.00 to an unidentified staff member of Brightturn.

"Insofar as the Php50,000.00 payment is concerned, Exhibits A, B and C were all signed by accused Genoves in

the stationary of Riverland Consultancy Services, her recruitment agency. This was made after accused Genoves interviewed complainant Dungca. Again, when complainant Dungca was interviewed by the unidentified person whom he called the employer, at the office of accused Hu at San Marcelino Street, he was accompanied by accused Genoves [Tsn p. 16, March 15, 2004] and was even assisted by her. The execution by accused Hu of the Medical Referral Slip, Exhibit F, and Addendum to Contract, Exhibit E, subsequent to the payment of Php50,000.00 sufficiently convinces the Court that accused Hu acted in conspiracy with her co-accused Genoves in recruiting complainant Dungca for a fee, but they failed to deploy him and return the fees paid.

"Prosecution's evidence that payment of Php5,000.00 was received by the staff of Brightturn was not controverted by accused Hu. Neither was the evidence that a list of persons who made payments through Rivberland whose payments were turned over to accused Hu controverted. Accused Hu is the president of Brightturn International Services. For the acts of her staff member, she is liable. Article II, section 6 [b] paragraph of Republic Act No. 8042 is explicit that ---

'In case of juridical persons, the officer having control, management or direction of their business shall be liable.'

"The special aggravating circumstance that the illegal recruitment was committed in large scale was not proven. Of the seven [7] complainants alleged in the Information, only complainant Dungca proved the crime charged. No proof was submitted that the six [6] others were recruited by accused Hu.

"x x x"[21] [underscoring supplied]

A motion for reconsideration was filed by the accused but the same was denied by the trial court on October 15, 2004.[22]

Hence, this appeal by the accused alleging that ---

"I

"THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF SIMPLE ILLEGAL RECRUITMENT DESPITE THE PROSECUTION'S FAILURE TO PROVE HER GUILT BEYOND REASONABLE DOUBT.

"II

"THE COURT A QUO GRAVELY ERRED IN FINDING THE EXISTENCE OF CONSPIRACY IN THE CASE AT BAR."[23]

The appeal lacks merit.

Illegal recruitment is committed when two (2) elements concur: First, the offender has no valid license or authority required by law to enable one to engage lawfully in recruitment and placement of workers. Second, he or she undertakes either any activity within the meaning of "recruitment and placement" defined under Art. 13, par. (b), or any prohibited practices enumerated under Art. 34 of the Labor Code. In case of illegal recruitment in large scale, a third elements is added: that the accused commits the acts against three or more persons, individually or as a group.[24]

Section 6 of Republic Act No. 8042, otherwise known as the "Migrant Workers and Overseas Filipinos Act of 1995", provides:

"SEC. 6. Definition. -- For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services,

promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-licensee or non-holder of authority contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: Provided, That any such non-licensee or non-holder who in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged. It shall likewise include the following acts, whether committed by any person, whether a non-licensee, non-holder, licensee or holder of authority:

"x x x

"(l) Failure to actually deploy without valid reason as determined by the Department of Labor and Employment; and

"(m) Failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault. Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage.

"Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

"The persons criminally liable for the above offense are the principals, accomplices and accessories. In case of juridical persons, the officers having control, management or direction of their business shall be liable."
[underscoring supplied]

To prove illegal recruitment, it must be shown that the accused-appellant gave complainants the distinct impression that he had the power or ability to send complainants abroad for work such that the latter were convinced to part with their money in order to be employed.[25] It was held that even the absence of receipts is not fatal to the case of the prosecution, for as long as it is clearly established through the witnesses' respective testimonies, that the accused is the one involved in prohibited recruitment.[26] Moreover, a non-licensee means any person, corporation or entity to which the labor secretary has not issued a valid license or authority to engage in recruitment and placement; or whose license or authority has been suspended, revoked or cancelled by the POEA or the labor secretary.[27] Illegal recruiters need not even expressly represent themselves to the victims as persons who have the ability to send workers abroad -- it is enough that they give the impression that they have the ability to enlist workers for job placement abroad in order induce the latter to tender payment of fees.[28]

In the case at bar, appellant assails the trial court's finding that the prosecution evidence sufficiently established her guilt beyond reasonable doubt for the commission of the crime of illegal recruitment. She contends that the testimony of sole prosecution witness, Carlito Dungca, one (1) of the private complainants, indubitably shows that it was to one (1) Jun Salta to whom Dungca initially applied for a job abroad, who told him that Riverland might send him overseas. At the onset of Dungca's application, it was Jun Salta who dealt with him and who told him that he failed the examination but would still be "isisingit." It was Jun Salta who also told them that they would not be issued receipts. Moreover, it is apparent from the records that it was accused Genoves who demanded payment of placement fee and informed them that the money would be turned over to the appellant. Appellant maintains her innocence of the crime charged, as she did not promise employment to the private complainants.

As to the liability of corporate officers under Sec. 6 of R.A. No. 8042, admittedly appellant was once a president of a licensed recruitment agency. However, it is not patent whether she had control, management or direction of Brightturn; her designation as an officer of the corporation per se did not automatically mean that she had the control and management of the corporation. What is more, the Information did not allege that the appellant was being sued in her capacity as officer of Brightturn and hence, the aforesaid provision should not be made to apply

in the present case as it would violate the accused's right to be informed of the nature of the charge against her.

Further, appellant points out that she even presented an official receipt which bore the name of their agency and the stamp of the BIR. Not one (1) of the receipts exhibited by the prosecution was issued by Brightturn, but instead by the Riverland Agency. The payment allegedly given to a staff of Brightturn was likewise not substantiated by an official receipt. As to the allegation of conspiracy, evidence of the prosecution was also insufficient to establish that appellant actually conspired with co-accused Genoves. To reiterate, appellant was working in a duly licensed agency. She did not even know Genoves who was working in a different recruitment agency. She only came across the name of Genoves in the receipts shown to her by the complainants. Hence, appellant did not know, and much less agree or unite in the commission of a felony with said Genoves.

Appellant stressed that she was adamant that though she interviewed applicants for Brightturn, the same was only for preliminary interview conducted at their office in San Marcelino St., and not in any other office, which is more credible and consistent with normal office procedure than Dungca's claim that she asked him a single question which lasted a minute in another agency's office. The alleged interview by Brightturn's employer could hardly be considered an act of conspiracy between appellant and accused Genoves. Dungca testified that Genoves and Jun Salta accompanied and assisted him during this interview at the office of Brightturn. It is thus clear that accused Genoves and Jun Salta played a significant role in Dungca's application. Yet, interestingly and perplexingly, Jun Salta was never alleged or impleaded as part of the supposed conspiracy. Conspiracy is not to be presumed. The trial court therefore could not have implicated appellant considering that the prosecution failed to establish her participation in the alleged conspiracy.

We sustain the trial court's conviction of appellant.

Evidence for the prosecution satisfactorily established beyond reasonable doubt that appellant, acting in concert with her co-accused Genoves who is the proprietress of another recruitment agency, Riverland, aided by their agent Jun Salta, had committed illegal recruitment within the meaning and contemplation of Sec. 6 of R. A. No. 8042. As correctly found by the trial court, appellant could not deny any participation and culpability considering that the placement fee of P50,000.00 though demanded and received by accused Genoves of Riverland, the latter turned the money paid by private complainant Dungca to appellant, which he had confirmed in a listing shown to him by appellant herself when he was following up his job application in March 2002 at the office of appellant (Brightturn). Moreover, appellant was there in the office of Genoves when private complainant first applied for overseas employment where she interviewed him for only a minute asking if the latter had already worked in Taiwan or abroad. It was also in the office of appellant where private complainant was interviewed by the supposed prospective employer for about two (2) hours, just beside the room where appellant held office.

But what is more incriminating is that it was appellant herself who signed the Addendum to the Contract (Exhibit "E") given to private complainant, as well as the Referral Slip for Medical Examination. Were it true that appellant had nothing to do with private complainant's application whom Brightturn allegedly merely accommodated or being referred to another agency, Best One, appellant and her staff could not have processed or issued the said documents in the first place. And even assuming *arguendo* that Brightturn is not the agency which actually had the job orders in Taiwan sought by private complainant and his fellow job applicants, their acceptance of the placement fee, issuance of documents and conduct of interview or screening definitely constitute acts of illegal recruitment as eventually they failed to deploy without valid reason, private complainant for overseas employment, nor reimburse him for expenses incurred by him, particularly the substantial placement fee of P50,000.00. Appellant during her testimony categorically admitted it was her staff, the employees of Brightturn who dealt with private complainant and prepared his documents. It was at Brightturn's office where private complainant and other applicants made follow-up after paying their placement fee and surety bond

(P5,000.00). When months passed without private complainant or any of his companions having been actually deployed in Taiwan where they applied for jobs as factory workers, they demanded reimbursement of the money they had given to appellant thru her staff and in the case of private complainant, thru her co-accused Genoves.

The trial court found the testimony given by private complainant as to how he was victimized by appellant and her co-accused Genoves, credible. It is settled that where the issue is on credibility, the findings of the trial court will generally not be disturbed. The trial court has the advantage of hearing the witnesses and observing their conduct during the trial, circumstances that carry great weight in appreciating credibility. The trial court is thus in a better position to settle such an issue.[29] Hence, such assessment is binding upon the appellate court in the absence of a clear showing that it was reached arbitrarily or that the trial court had plainly overlooked certain facts of substance or value that if considered might affect the result of the case.[30]

Moreover, the rule has been said that a person charged with illegal recruitment may be convicted on the strength of the testimony of the complainants, if found to be credible and convincing, and that the absence of receipts to evidence payment to the recruiter would not warrant an acquittal, a receipt not being fatal to the prosecution's cause.[31] We find nothing in the records to indicate arbitrariness in the trial court's evaluation of private complainant Dungca's testimony as credible, which is corroborated not only by documentary evidence but also by the very testimony of appellant who admitted her signatures in Exhibits "E" and "F", the processing of Dungca's application by her staff and personal follow-up with her made by Dungca and other job applicants even during the period they were no longer allowed to perform recruitment activities with their license having expired. Contrary to her assertion before this Court, appellant had testified that as President of Brightturn (since 1997), her responsibilities include the overall management and operation of the agency. In fact, she was only too aware that the agency's license had already expired by December 2001 and yet, the agency and her staff continued to process the application of private complainant on the pretext that they are forwarding or "referring" it to another agency, Best One.

Assuming for the sake of argument that appellant was just accommodating ("isisingit") the applications of private complainant together with others at the time Brightturn's license had already expired or they have no more job orders for Taiwan, such circumstance will not exempt her from criminal liability. Under the law, recruitment includes the act of referral or the act of passing along or forwarding of an applicant for employment after initial interview of a selected applicant for employment to a selected employer, placement officer, or bureau.[32] Appellant categorically declared that the job applicants including private complainant whose documents they supposedly forwarded to Best One, had been previously selected by the alleged prospective employer. Even the pretended good faith of appellant is not available as a defense.[33] And further assuming *arguendo* that appellant did not receive any payment for the promised or offered employment, such circumstance is of no moment. From the language of the statute, the act of recruitment may be "for profit or not"; it suffices that the accused "promises or offers for a fee employment" to warrant conviction for illegal recruitment." [34]

Thus, although it was the office of Riverland where private complainant initially went and it was co-accused Genoves of said agency who issued official receipts for the placement fee of P50,000.00 paid by private complainant, the subsequent interview, processing of his application for overseas employment at Brightturn, where Genoves "referred" private complainant and where appellant and her staff attended to him, clearly established appellant's conspiracy with Genoves in the commission of the prohibited acts of recruitment. At this point, it is crucial to underscore that the courts cannot countenance such fraudulent ploy of the two (2) recruitment agencies, Riverland and Brightturn, in what appears as deliberate misrepresentations to confuse their victims as to who is their real or actual recruiter, and yet succeeding in enticing said unsuspecting job-seekers to shell out substantial amounts of placement fee upon false promise of employment as factory workers in Taiwan. What is

important is that appellant performed acts essential and indispensable to carry out the criminal design of defrauding private complainant who paid the placement fee and surety bond, induced by their promise or offer of overseas employment but failing to so deploy him abroad without valid reason and without reimbursing such payments he had made.

Indeed, appellant's posture, at this stage, of pointing to her cohorts as the culprits by contending that it was actually Jun Salta who directly dealt with private complainant Dungca and promised overseas employment to private complainant; her co-accused Genoves of Riverland who demanded for payment of placement fee and actually received his money as evidenced by receipts issued to him by Genoves; and Jun Salta and Genoves both assisted him when they went to Brightturn for his interview with the employer, will not save the day for her. The evidence on record clearly demonstrated that the individual actuations of appellant and her co-accused Genoves were directed at a singular criminal purpose -- to delude the private complainant and his fellow applicants into believing that they would be employed abroad. Without the initial though very brief meeting between private complainant, appellant and Genoves at the latter's office, and Genoves' referral to Brightturn, private complainant would not have complied with further requirements imposed by appellant's agency, without Genoves' representation that the placement fee paid by private complainant would be turned over to appellant whose office will be the one (1) to process his application and deploy him in Taiwan to work as factory worker, private complainant would not have paid the amount demanded from him by Genoves; and without the list of applicants who had already paid shown by appellant to private complainant sometime in March 2002 when the latter was already asking why he and other applicants were not yet deployed despite payment of placement fee, private complainant would not have paid the additional P5,000.00 received by Brightturn's staff as surety bond, which payment together with the Addendum to Contract and Referral Slip for Medical Examination given by appellant, further convinced private complainant into believing that appellant could really send him to work in Taiwan.

As held by the Supreme Court in *People vs. Lapis*,^[35] conspiracy may still be inferred even if individual acts of the accused were not necessarily indispensable, thus:

"Even assuming that the individual acts of the accused were not necessarily indispensable to the commission of the offense, conspiracy would have still been present. Their actions, when viewed in relation to one another, showed a unity of purpose towards a common criminal enterprise and a concurrence in their resolve to commit it.

"In *People v. Gamboa* [341 SCRA 451], the Court had occasion to discuss the nature of conspiracy in the context of illegal recruitment as follows: 'Conspiracy to defraud aspiring overseas Contract workers was evident from the acts of the malefactors whose conduct before, during and after the commission of the crime clearly indicated that they were one in purpose and united in execution. Direct proof of previous agreement to commit a crime is not necessary as it may be deduced from the mode and manner in which the offense was perpetrated or inferred from the acts of the accused pointing to a joint purpose and design, concerted action and community of interest. As such, all the accused, including accused-appellant, are equally guilty of the crime of illegal recruitment since in a conspiracy the act of one is the act of all.' (Emphasis supplied)

"To establish conspiracy, it is not essential that there be actual proof that all the conspirators took a direct part in every act. It is sufficient that they acted in concert pursuant to the same objective.

"Conspiracy is present when one concurs with the criminal design of another, indicated by the performance of an overt act leading to the crime committed."^[36]

Upon the foregoing facts and applicable law, the trial court did not err in convicting the appellant for simple illegal recruitment, there being only one (1) victim which the prosecution has proven by evidence, despite the allegation in the Information that appellant and her co-accused committed the offense of large scale illegal

recruitment against seven (7) named individuals, including herein private complainant. A conviction for large scale illegal recruitment must be based on a finding in each case of illegal recruitment of three or more persons whether individually or as a group. It is true that the law does not require that at least three victims testify at the trial; nevertheless, it is necessary that there is sufficient evidence proving that the offense was committed against three or more persons.[37]

As to the penalty of imprisonment imposed by the trial court, the same should be reduced to two (2) years, four (4) months and one (1) day of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum, with the application of the Indeterminate Sentence Law, the same being favorable to the accused.

WHEREFORE, premises considered, the present appeal is hereby DISMISSED for lack of merit. The appealed Decision dated August 12, 2004 of the Regional Trial Court of Makati City, Branch 138 in Criminal Case No. 03-857 is hereby AFFIRMED with MODIFICATION in that the accused-appellant is hereby instead sentenced to suffer an indeterminate prison term of two (2) years, four (4) months and one (1) day of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum.

With costs against the accused-appellant.

SO ORDERED.

Bersamin and Librea-Leagogo, JJ., concur.

[1] Penned by Judge Sixto Marella, Jr.

[2] Pages 4-5 of Judgment, Records, pp. 198-199.

[3] TSN, June 15, 2004, pp. 3-4, Records, pp. 164-165.

[4] Exhibit "B", Records, p. 103.

[5] TSN, March 15, 2004, pp. 2-4, 13-15, Records, pp. 132-134, 143-145.

[6] TSN, March 15, 2004, pp. 4-7, Records, pp. 134-137; Exhibits "A", "B" and "C", Records, pp. 103-104.

[7] TSN, March 15, 2004, pp. 8-10, 18-20; Exhibits "E" and "F", Records, pp. 106-113.

[8] TSN, March 15, 2004, 10,12-13, 20-22, Records, pp. 140,142-143, 150-152; Exhibit "D", Records, p. 105.

[9] Records, p. 1.

[10] Records, pp. 25-28, 37-39.

[11] Records, p. 49.

[12] TSN, March 15, 2004, pp. 2-11, Records, pp. 132-141.

[13] Ibid., pp. 11-19 (141-149).

[14] Ibid., pp. 19-21 (149-151).

[15] Ibid., pp. 21-22 (151-152).

[16] TSN, June 15, 2004, pp. 2-11, Records, pp. 164-173.

- [17] Ibid., pp. 12-19 (174-180).
- [18] Ibid., pp. 19-21 (180-182).
- [19] Ibid., pp. 21-23 (182-184).
- [20] Records, pp. 195-199.
- [21] Ibid., pp. 197-198.
- [22] Records, pp. 201-211.
- [23] Rollo, p. 28.
- [24] People vs. Baytic, 398 SCRA 18.
- [25] People vs. Angeles, 380 SCRA 519.
- [26] People vs. Dionisio, 375 SCRA 56.
- [27] People vs. Alvarez, 387 SCRA 448.
- [28] People vs. Lapis, 391 SCRA 131.
- [29] People vs. Olermo, 406 SCRA 412.
- [30] People vs. Recio, 282 SCRA 274, 284.
- [31] People vs. Fortuna, 395 SCRA 354.
- [32] People vs. Ordoño, 335 SCRA 331.
- [33] Vide: People vs. Gasacao, 474 SCRA 812.
- [34] People vs. Dela Piedra, 350 SCRA 163.

[35] 391 SCRA 131

- [36] Ibid., pp. 147-148.
- [37] People vs. Dela Piedra, supra., at p. 185.

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